

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

---

Commonwealth Edison Company	:	
	:	
Approval of the Energy Efficiency and	:	Docket No. 13-0495
Demand Response Plan Pursuant to	:	
Section 8-103(f) of the Public Utilities Act	:	(Reopen)
	:	
Ameren Illinois Company d/b/a	:	
Ameren Illinois	:	Docket No. 13-0498 (Cons.)
	:	
Approval of the Energy Efficiency and	:	(Reopen)
Demand Response Plan Pursuant to	:	
220 ILCS 5/8-103 and 220 ILCS 5/8-104	:	
	:	
Illinois Department of Commerce	:	Docket No. 13-0499
and Economic Opportunity	:	
	:	(Reopen)
Approval of its Energy Efficiency	:	
Portfolio and Plan Pursuant to Sections	:	
8-103(e) and (f) and 8-104(e) and (f) of	:	
the Public Utilities Act.	:	

---

**AGREED DRAFT ORDER**

---

By the Commission:

**I. Procedural History**

On January 28, 2014, the Commission entered a Final Order in this proceeding, approving the Department's Energy Efficiency ("EE") Portfolio and Plan ("Plan") effective for the period June 1, 2014 through May 31, 2017. On June 10, 2016, DCEO filed a Verified Petition for Reopening and Motion for Clarification ("Petition to Reopen"). On July 20, 2016, the Commission granted the Department's Petition to Reopen. Additionally, the Commission reopened the plan dockets for Commonwealth Edison Company ("ComEd") and Ameren Illinois Company's ("Ameren"), Docket No. 13-0495 and Docket No. 13-0498 respectively, and consolidated the three dockets.

Pursuant to notice given in accordance with the law and the rules and regulations of the Commission, a status hearing was scheduled in this matter before a duly-

authorized Administrative Law Judge (“ALJ”) of the Commission at its offices in Chicago, Illinois on August 1, 2016. Counsel for ComEd, Ameren, Staff, the Department, the Attorney General (“AG”), Illinois Industrial Energy Consumers (“IIEC”) and REACT entered appearances. Pursuant to the schedule established at the hearing, Ameren, ComEd, Staff and the Department filed Initial Comments on August 12, 2016. On August 19, 2016, Ameren, ComEd, Staff, IIEC, the City of Chicago (“City”) and the AG filed Responsive Comments.

Upon reviewing the initial and responsive briefs, Counsel for the Department, Ameren, ComEd, Staff, the AG and the City (collectively the “Parties”) agreed that the issues were sufficiently narrow that further briefing was unnecessary but rather the Parties could collaborate on an agreed draft order. The ALJ concurred with this approach. IIEC, while not included among the Parties, has indicated it will not object to the entry of this order under the unusual circumstances present here.

## **II. Factual Background**

ComEd and Ameren (collectively “Utilities”) are both corporations duly incorporated under the laws of the state of Illinois and are duly authorized to transact business in Illinois. Each is a public utility within the meaning of Section 3-105 of the Public Utilities Act (“Act”)

Pursuant to Section 8-103 of the Act, electric utilities, including ComEd and Ameren, are required to design, oversee and implement EE measures and demand response programs to reduce delivery load. Specifically, each electric utility is required to implement 100% of demand response measures and 75% of energy efficiency measures in its respective Plan as approved by the Commission. The remaining 25% of energy efficiency measures approved by the Commission are to be implemented by the Department.

ComEd, Ameren and the Department are required to file plans every three years, outlining their planned programs to meet energy savings reduction goals for the next three-year planning period. All three entities filed the plans at issue in this proceeding on August 30, 2013 in Docket Nos. 13-0495 (ComEd), 13-0498 (Ameren) and 13-0499 (the Department). These plans cover the planning period June 1, 2014 through May 31, 2017. At issue in this consolidated docket are funds collected by the Utilities during the period beginning June 1, 2015 and ending May 31, 2016. This timeframe is the second plan year of the 3-year planning period and is generally referred to as Electric Plan Year (“EPY”) 8.

Electric utilities are permitted to recover, through rates, the costs of energy efficiency and demand response measures administered by both the utility and the Department, pursuant to an automatic adjustment clause tariff. Section 8-103(d)(5) of the Act provides, “[T]he amount of energy efficiency and demand-response measures implemented for any single year shall be reduced by an amount necessary to limit the estimated average net increase due to the cost of these measures included in the amounts paid by eligible retail customers in connection with electric service to no more than the greater of 2.015% of the amount paid per kilowatthour by those customers during the year ending May 31, 2007 or the incremental amount per kilowatthour paid for these

measures in 2011.” 220 ILCS 5/8-103(d)(5). The Utilities’ budgets for each plan year thus equate to the applicable amount per kWh multiplied by prospective sales, and were approved by the Commission in its final orders in Docket Nos. 13-0495 and 13-0498.

The Department implements and administers the EE programs as set forth in its Plan, and then invoices the Utilities for the costs associated with this implementation and administration. Funds collected by the utility for Department programs are submitted to the Department once the Department has provided the utility with documentation evidencing the Department has executed rebate agreements, grants or contracts for energy efficiency measures. The Utilities are not required to advance any money to the Department but only to forward such funds as they have collected from ratepayers.

At the end of each plan year, and pursuant to the Act, the Commission conducts reconciliation proceedings to adjust for any over- or under-collection of funds by the Utilities. Any over- or under-collection of funds is factored into future rates. Revenues and expenses associated with Department-administered EE programs are included in the utility’s annual reconciliation proceeding only to the extent that the utility must demonstrate that the funds collected for Department programs were submitted to the Department.

Notwithstanding the annual reconciliation proceedings, Utilities are not required to demonstrate compliance with Plan goals on an annual basis. Rather, Section 8-103(b) of the Act, as amended by Public Act 98-0090, permits Utilities to demonstrate compliance with Commission-approved Plan goals by showing that the cumulative energy savings achieved during a 3-year planning period is equal to the sum of the annual goals. This change reflects the reality of the ebb and flow of actual EE results, as new EE programs are implemented and marshalled through the inherently slow start-up phase, some EE programs achieve maximum energy savings goals and other older EE programs are concluded.

Due to an unprecedented State budget impasse during EPY8, the Department was without a budgetary appropriation and thus determined that it was not authorized to enter into agreements, grants or contracts for energy efficiency programs. As a result, although the Utilities collected all the funds necessary to fund EE measures in EPY8, approximately \$52.7 million of the money remains unspent.

The Department has now received an appropriation and is working to implement not only the programs originally planned for EPY8, but also the programs currently planned for EPY9 (June 1, 2016 to May 31, 2017). The Department plans to spend approximately twice as much as originally anticipated in EPY9 to make up for the lack of spending in EPY8.

Section 8-103(e) provides that the “utility shall not be required to advance any money to the Department but only to forward such funds as it has collected.” In other words, the Utilities can only pay invoices if they have already collected sufficient funds to satisfy them. The Parties concur that, because of the unique and special circumstances created by the lack of a budgetary appropriation for Department energy efficiency programs, Commission action is necessary to ensure that the Department will have access to the funds previously collected in EPY8 and that the Utilities will also be able to

collect funds for EPY9 programs pursuant to the EPY9 budgets approved by the Commission in its final orders in Docket Nos. 13-0495 and 13-0498 in compliance with the requirements of Section 8-103(d)(5) and their respective tariffs. Specifically, the Parties seek 1) Commission clarification that, under these unique circumstances, Section 8-103 of the Act permits Utilities to “roll over” any unspent energy efficiency funds from one plan year to another, within the same 3-year planning cycle and 2) a Commission determination regarding whether either or both of the Utilities’ tariffs must be amended to accomplish such a roll over.

The Parties believe that an interpretation that EE funds can be rolled over from EPY8 to EPY9, within the same 3-year planning period, is consistent with Section 8-103(b) as currently in force and effect, which allows the Utilities some leeway in achieving annual plan goals by averaging the annual savings over the 3-year planning period. Further, the Parties urge the Commission to find that it is appropriate in the special circumstances here to consider the Utilities’ budgets for EE programs as a collective 3-year total, and allow spending over or above what is budgeted for EPY9, so long as the total amount spent during the current 3-year planning period is in keeping with the utility’s total 3-year budget.

Because the Utilities have different tariffs, the method by which the Parties suggest each utility address the issues is also different.

### **III. Ameren**

Under the terms of its tariff, modified in 2015, Ameren is allowed to amortize any over- or under-collection over the remaining months of the respective 3-year planning period. Specifically, the tariff states:

Amortization of all or a portion of the quantity included in the brackets, as necessary, which will be a period of months not to exceed the number of months remaining in the current three year plan approved by the Commission. For a situation in which amortization exceeds 12 months, only the first 12 months will be included in the EDRC. At the end of each three year plan, a true-up of costs and recoveries will be reflected in the rates for the first year of the subsequent planning period.

2nd Revised Sheet No. Rider EDR – Energy Efficiency and Demand-Response Cost Recovery (Ill. C.C. No. 1, 2nd Revised Sheet No. 42 – 2nd Revised Sheet No. 42.004.

Ameren began incrementally “refunding” the money collected during EPY8 to consumers in June 2016 but has since stopped. Money was refunded through an adjustment in rates; Ameren reduced the rates to reflect the money that it currently had for EE programs. In effect, Ameren treated the funds collected in EPY8 as credit toward funding for EPY9 programming, and reduced rates to adjust for the fact that money was already collected.

In this docket, the Parties filed comments offering divergent opinions regarding the proper interpretation of Section 8-103(d)(5) of the Act. Despite the difference of opinions, the Parties suggest it is unnecessary to address the issue of statutory interpretation at this time because, regardless of how the statute is interpreted, there is consensus that Ameren's adjustment of rates does not violate the statute.

#### **IV. ComEd**

Under the terms of its tariff, ComEd refunds any over-collection beginning one year following the end of the plan year. (ILL. C.C. No. 10, 3rd Revised Sheet No. 248). ComEd retains the over-collected amounts from EPY 8 (ended May 31, 2016) until June 1, 2017 at which time it will begin issuing refunds to customers. This lag exists in order to give the company time to ascertain the precise amount of over- or under-collection.

The Parties suggest that ComEd's tariff be amended to exempt funds collected on behalf of the Department during EPY8 from the reconciliation process. This will allow ComEd to retain the funds and disburse them upon receipt of documentation from the Department.

Staff suggests the language in the definition of Automatic Reconciliation Factor ("ARF") within ComEd's Rider EDA tariff be revised as follows to address this issue:

ARF = Automatic Reconciliation Factor, in \$, is equal to the cumulative over collection or under collection from applicable retail customers, pursuant to plans approved by the ICC for the Program Year beginning June 1 in Year X-2, resulting from the application of then applicable EDAs during the EDA Application Period beginning in Year X-2. Notwithstanding the previous provisions of this definition, (a) the ARF included in EDAs applicable during the EDA Application Period beginning with the June 2016 monthly billing period is equal to zero, and (b) the ARF included in EDAs applicable during the EDA Application Period beginning with the June 2017 monthly billing period and extending through the May 2018 monthly billing period does not incorporate amounts collected on behalf of DCEO through the application of then applicable EDAs during the EDA Application Period beginning with the June 2015 monthly billing period and extending through the May 2016 monthly billing period.

#### **V. Commission Analysis and Conclusion**

As indicated above, ComEd and Ameren seek clarification as to their rights and obligations with respect to funds collected for Department EE programs during EPY8 but not expended.

The Commission has reviewed the record of this proceeding and finds that the relief requested by the Parties is necessary and appropriate under the special circumstances presented in this docket. The record shows that clarification and, in the case of ComEd, tariff amendments are necessary to ensure that monies collected by the

Utilities to fund Department EE programs that would have occurred in EPY8 can be retained and ultimately spent for that purpose in EPY9.

The Commission notes that action is necessary due to the extraordinary circumstances created by the State budget impasse in EPY8 and that the Commission's orderings and findings in this Order are limited to the specific and unusual facts and circumstances presented here, and do not constitute, and should not be interpreted as, creating any precedent or rule of general application to energy efficiency plans or reconciliations or any other matter.

The Commission concludes that the Utilities may, consistent with the Act, roll over unspent funds from EPY8 to EPY9, as the two plan years are within the current 3-year planning cycle.

## **VI. Orderings and Findings**

The Commission, having given due consideration to the entire record herein and being fully advised in the premises, is of the opinion and finds that:

1. Commonwealth Edison Company and Ameren Illinois are electric utilities providing service to the public within the state of Illinois and, as such, are public utilities as defined in Section 3-105 of the Public Utilities Act;
2. the Commission has jurisdiction over the Utilities and the subject matter herein;
3. the recitals of fact and conclusions of law reached in the prefatory portion of this Order are supported by the evidence of record, and are hereby adopted as findings of fact and conclusions of law;
4. the findings of fact and conclusions of law reached in this Order are limited to the issues raised in this docket and do not modify or supersede Commission orders in Docket Nos. 13-0495, 13-0498 and 13-0499 except as expressly stated herein;
5. the Commission's authorization of the reversal of Ameren's incremental "refunding" of the money collected during EPY8 to consumers beginning in June 2016, during EPY9, does not violate Section 8-103(d)(5) of the Act;
6. pursuant to Section 8-103(b), the money spent by a utility in EPY8 and EPY9 for energy efficiency programs may be above or below the Commission-approved budget for the respective plan year, so long as the money spent over the 2014-2017 planning period is commensurate with the Commission-approved budget for that 3-year planning period;
7. funds collected by a Utility for EE programs during EPY8 may be expended in EPY9 as the planning years are within the same 3-year planning cycle; and

8. ComEd's tariff should be modified to accomplish the goals of this order as set forth below.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that Ameren is authorized to reverse the incremental "refunding" of money collected during EPY8 and recollect the refunded money in EPY9.

IT IS FURTHER ORDERED by the Commission that the money spent by an electric utility in EPY9 for energy efficiency programs may be above or below the Commission-approved budget for that plan year, so long as the money spent over the 2014-2017 planning period is commensurate with the Commission-approved budget for that 3-year planning period.

IT IS FURTHER ORDERED that funds collected by a Utility for EE programs during EPY8 may be expended in EPY9 as those years are within the same 3-year planning cycle.

IT IS FURTHER ORDERED that ComEd's Rider EDA tariff is revised as follows:

ARF = Automatic Reconciliation Factor, in \$, is equal to the cumulative over collection or under collection from applicable retail customers, pursuant to plans approved by the ICC for the Program Year beginning June 1 in Year X-2, resulting from the application of then applicable EDAs during the EDA Application Period beginning in Year X-2. Notwithstanding the previous provisions of this definition, (a) the ARF included in EDAs applicable during the EDA Application Period beginning with the June 2016 monthly billing period is equal to zero, and (b) the ARF included in EDAs applicable during the EDA Application Period beginning with the June 2017 monthly billing period and extending through the May 2018 monthly billing period does not incorporate amounts collected on behalf of DCEO through the application of then applicable EDAs during the EDA Application Period beginning with the June 2015 monthly billing period and extending through the May 2016 monthly billing period.

IT IS FURTHER ORDERED that any motions, petitions, objections, and other matters in this proceeding which remain outstanding are hereby denied.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this \_\_\_\_ day of \_\_\_\_\_, 2016.

(SIGNED) BRIEN SHEAHAN  
Chairman